

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Misc. Application No.1039 of 2024

Applicants : Khawaja Danish Tahir & another
through Mr. Bilal Rashid, Advocate.

Respondent No.1 : Javeriah Usman
through Mr. Umar Farooq, Advocate.

Respondent Nos.2&3: The State
through M/s. Qamaruddin & Tanseera Yaqub,
Asstt: PG Sindh.

Date of hearing : 16.05.2025

Date of order : 30.05.2025

ORDER

KHALID HUSSAIN SHAHANI, J.-- Through this Criminal Miscellaneous Application filed under Section 561-A Cr.P.C, the Applicants have assailed the order dated 08.10.2024 passed by the learned XIII Additional Sessions Judge (East), Karachi in his capacity as Ex-officio Justice of Peace on Criminal Misc. Application No. 3807/2024, whereby Respondent No.1's request under Section 22-A(6) Cr.P.C. was allowed, and directions were issued to the Station House Officer (SHO), P.S. Bahadurabad to record the statement of the applicant (Respondent No.1 herein) and if the same disclosed a cognizable offence, to incorporate it in the FIR and proceed in accordance with law.

2. Learned counsel for the Applicants contended that the impugned order is illegal and amounts to abuse of process of law. He argued that a purely civil dispute pertaining to inheritance and inter se ownership of vehicles has been given a criminal colour. He submitted that Civil Suit No. 1785/2023 filed by Respondent No.1, seeking declaration, partition, rendition of accounts, and cancellation of documents, is pending adjudication before this Court wherein an interim status quo order was passed on 30.10.2023. It is further argued that the vehicles in question were transferred prior to the institution of the suit and that the allegations now made before the learned Ex-officio Justice of Peace are directly sub-judice in the said civil suit. The learned counsel relied upon *1995 MLD 2037* to argue that where civil proceedings are pending on the same subject matter, parallel criminal proceedings should not be encouraged. It is also contended that the issue of ownership and transfer of vehicles falls primarily within the domain of the

Excise and Taxation Officer (ETO) under Sections 34 and 112 of the Sindh Motor Vehicles Ordinance, 1965, and that the SHO Bahadurabad has already acted on the application, recorded statements, and forwarded queries to the ETO for verification. The impugned direction, it is argued, was issued despite the fact that the police had not yet completed its initial verification and had specifically sought time in writing, dated 04.10.2024, to submit a proper report. Learned counsel asserted that the order was passed in haste and amounts to pre-judging the dispute, especially when the same matter is already sub judice.

3. The respondents, particularly respondent No. 1, have filed detailed objections asserting that the order of the learned Justice of Peace is well-reasoned and based on documentary evidence, including confirmation from the Excise and Taxation Department that the vehicles of the deceased were transferred to the applicants after his death using his CNIC, which prima facie suggests impersonation and forgery. The registration documents of the vehicles are already part of the record in Suit No.1785/2023 pending before this Court. The applicants and respondent No.1 are siblings. The deceased father left behind movable and immovable assets, and the applicants, by gaining exclusive access to the original documents, transferred assets to their names in exclusion of their sisters and widowed mother. The impugned order does not bar or interfere with the civil suit; rather, it acknowledges that pendency of civil proceedings does not preclude initiation of criminal proceedings where allegations of fraud or other cognizable offences are prima facie disclosed. The police failed to take action despite the complaint by respondent No.1. The learned Justice of Peace has rightly exercised jurisdiction to direct compliance with law. The Excise Department confirmed, through its letter dated 14.10.2024, that the applicants used the CNIC of their deceased father to transfer vehicles posthumously, which, if established, constitutes clear impersonation and forgery. The applicants previously filed Cr. Misc. Application No.3760/2024 against respondent No.1 and her husband, which was dismissed by the learned Xth Additional Sessions Judge East, Karachi, observing that it was an attempt to convert civil dispute into criminal litigation. A separate inquiry by the FIA is pending against the applicants on allegations of misappropriation of funds from the deceased's accounts, and a constitutional petition filed by them (CP No. D-3692/2024) was dismissed by this Court with direction to FIA to proceed in accordance with law.

4. Furthermore the learned APG for the State supported the impugned order and submitted that the facts narrated in the application disclosed a cognizable offence and the learned Ex-officio Justice of Peace rightly exercised jurisdiction under Section 22-A Cr.P.C. He argued that the registration number of the vehicle in question (EAA-012) clearly showed the disputed vehicle was in the name of the deceased father and had been unlawfully transferred without the consent of the other heirs. He submitted that mere pendency of civil proceedings does not bar criminal action if the facts disclose a cognizable offence.

5. Heard the respective contentions and perused the record. It is an admitted position that Respondent No.1 has already instituted Civil Suit No.1785/2023 before this Court concerning the distribution of the estate of the deceased father of the parties. It is a settled principle of law that proceedings before the learned Justice of Peace under Section 22-A(6) Cr.P.C. are aimed at ensuring that the police perform their legal duty of acting upon information disclosing cognizable offence. The scope of interference by this Court under Section 561-A Cr.P.C. is narrow and can only be invoked when the impugned order suffers from glaring illegality or patent perversity. In the present case, the following facts are material and cannot be ignored.

6. The Excise and Taxation Department has confirmed that the applicants transferred vehicles in their names using the CNIC of their father posthumously, without declaration of death.

7. This conduct, if established during investigation, may constitute offences under Sections 419, 420, 468, 471, and 109 PPC. Mere pendency of a civil suit does not preclude criminal liability where separate elements of criminal offences are disclosed. The Hon'ble Supreme Court of Pakistan in case of *Salman Ashraf Vs. The State* (2023 SCMR 1292) wherein it was held as under; -

“8. It hardly needs reiteration that the object of a civil proceeding is to enforce civil rights and obligations while that of a criminal proceeding is to punish the offender for the commission of an offence. It is, therefore, a well-established legal position in our jurisdiction that both the civil proceeding and criminal proceeding relating to one and the same matter can be instituted and ordinarily proceeded with simultaneously.¹ Although there is no bar to the simultaneous institution of both proceedings, the trial in the criminal proceeding may be stopped in certain circumstances.² And the guiding principle in this regard is also well-defined. It is that

where the criminal liability is dependent upon or intimately connected with the result of the civil proceeding and it is difficult to draw a line between a bona fide claim and the criminal act alleged, the trial in the criminal proceeding may be postponed till the conclusion of the civil proceeding.³ Thus, where either of these two conditions is not fulfilled, i.e., where the subject matter of civil proceeding and that of criminal proceeding are distinct, not intimately connected,⁴ or where the civil proceeding is instituted mala fide to delay the criminal prosecution, not bona fide,⁵ the criminal proceeding may not be stayed.”

8. The learned Justice of Peace has not directed registration of FIR automatically but has directed inquiry to determine if cognizable offence is disclosed, this is entirely in line with the law laid down in *PLD 2016 SC 581* (Suo Motu Case No.14 of 2015). It is a well-settled principle that the standard of proof required in criminal proceedings is distinct from that in civil matters. In civil litigation, a fact may be established on the basis of a mere preponderance of probability, whereas in criminal cases, the prosecution must prove the charge beyond reasonable doubt. Accordingly, divergent findings may validly emerge from civil and criminal forums on the basis of the same set of facts, due to the differing evidentiary thresholds.

9. The applicants’ previous conduct, including a failed attempt to criminally implicate respondent No.1 and her husband (Cr. Misc. Appn. No.3760/2024), and the FIA’s ongoing inquiry against them, further cast doubt on their bona fides. In view of above discussion, the impugned order dated 08.10.2024 passed by the learned XIII Additional Sessions Judge, East, Karachi (Justice of Peace), is legally sound and does not suffer from any jurisdictional defect, illegality, or perversity. The learned Judge has carefully considered the material placed before him and passed a well-reasoned order, ensuring that criminal law is set in motion only upon confirmation of a cognizable offence through proper inquiry.

10. The objections raised by the applicants are speculative and based on disputed facts which can only be thrashed out through investigation and/or trial, if required. This Court finds no merit in the present application. Criminal Misc. Application is hereby dismissed. The parties are, however, at liberty to pursue their remedies before competent forums in accordance with law.

J U D G E